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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 02-00225 DAE
)	
Plaintiff,)	OPPOSITION TO THE DEFENDANT'S
)	MOTION TO EXCLUDE THE
vs.)	TESTIMONY OF A SUMMARY
)	WITNESS; CERTIFICATE OF
ANDY S.S. YIP, (01))	SERVICE
BRENDA M. O. CHUNG, (02))	
)	Trial Date: 8/28/07
Defendants.)	Time: 9:00 a.m.
)	Judge: David Alan Ezra

OPPOSITION TO THE DEFENDANT'S MOTION
TO EXCLUDE THE TESTIMONY OF A SUMMARY WITNESS

The summary witness will testify about nine schedules based on the evidence admitted at this trial. Those schedules will show how the off-the-books business profits received in the form of Yen were handled by the defendant, the size and scope of his fraud and summaries of how those monies were used to benefit both defendants personally.

STATEMENT OF THE LAW

A. Summary Witness and Summary Charts

Near the end of its case, the United States intends to call a summary witness trained in taxation and accounting. This witness will sit throughout the trial and provide an analysis of the numerous financial records introduced into evidence. The purpose is to assist the Court and the jury through what may be at times confusing and complicated financial evidence. This summary witness is expected to provide an analysis of the numerous financial records introduced into evidence and explain to the jury the tax consequences of the United States' evidence.

The introduction of testimony from a summary witness has been approved by the Ninth Circuit in criminal tax prosecutions. United States v. Soulard, 730 F.2d 1292, 1300 (9th Cir. 1984). The defendant in Soulard unsuccessfully challenged the Honorable District Court Judge Harold M. Fong's decision to permit an IRS agent to summarize testimony introduced during the trial. Id. at 1299. The Ninth Circuit affirmed the trial court's "wide discretion" to admit testimony from the United States' summary witness. Id. at 1299-1300. Likewise, the admission of testimony of this nature has been upheld in other tax prosecutions when challenged. United States v. Marchini, 797 F.2d 759 (9th Cir. 1986), cert. denied, 479 U.S. 1085 (1987); United States v. Harenberg, 732 F.2d 1507, 1513-14 (10th Cir.

1984); and United States v. Schafer, 580 F.2d 774, 778 (5th Cir.), cert. denied, 439 U.S. 970 (1978).

As addressed in Marchini and cases cited within, a court can easily ensure that the summary witness will testify only to evidence adduced at trial and be subject to thorough voir dire and cross-examination by the defense. Marchini, 797 F.2d at 766. In this case, the United States will introduce voluminous bank records to demonstrate deposits into defendants' accounts. There also will be testimony from numerous witnesses concerning these deposits and transfers.

DATED: Honolulu, Hawaii, August 27, 2007.

Respectfully submitted,

EDWARD H. KUBO, JR.
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By /s/ Leslie E. Osborne, Jr.
LESLIE E. OSBORNE, JR.
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at the last known address:

Served Electronically through CM/ECF:

Howard T. Chang howardchang.crimtaxatty@hawaiiantel.net
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ANDY S.S. YIP

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Attorney for Defendant
BRENDA M. O. CHUNG
DATED: Honolulu, Hawaii, August 27, 2007.

/s/ Cheri Abing